

EXHIBIT “A” Version 1

40.440 HABITAT CONSERVATION

40.440.010 INTRODUCTION

A. Purpose.

4. The provisions of this chapter dealing with existing agricultural activities recognize:

- a. That the maintenance and enhancement of natural resource-based industries, including agriculture, is a goal of the state Growth Management Act;
- b. That any regulation should be consistent with the “right to farm” provisions in Chapter 9.26 of this Code;
- c. That agricultural lands can provide habitat;
- d. That habitat protection must relate to the baseline of existing functions and values given historic agricultural practices, rather than seeking to restore pre-agricultural conditions;
- e. That since agricultural activities are dynamic, habitat functions and values can be expected to fluctuate during the course of an agricultural cycle, which fluctuation must be considered in identifying existing functions and values; and
- f. That it is expected that continuation of existing agriculture will not degrade existing functions and values unless sediment, nutrients, or chemicals are allowed to enter streams, or existing beneficial canopy in close proximity to streams is significantly degraded;

40.440.040 SPECIFIC ACTIVITIES

B. Agricultural Uses, including Animal Husbandry (reserved).

1. Applicability.

a. Non-riparian habitat.

(1) Agricultural activities in existence on or before [date of the ordinance adoption] within designated non-riparian habitat areas are presumed not to cause substantial degradation of existing habitat functions and values and are, therefore, exempt from regulation under this chapter.

(2) The conversion of designated non-riparian habitat areas to agricultural use subsequent to [the date of ordinance adoption] shall be subject to the non-development clearing rules of this chapter. Conversion does not include changes from one agricultural use to another agricultural use or changes in crops.

b. Riparian habitat.

(1) Agricultural activities in existence on [the date of ordinance adoption] within designated riparian priority habitat areas, and the expansion thereof onto

adjacent lands not to exceed twenty-five percent (25%) of the footprint of the existing agricultural use, shall, at the owner's option, be subject to:

(a) The agricultural module provided below; or

(b) The non-development clearing rules of this chapter.

(2) The conversion of designated riparian habitat areas to agricultural use, subsequent to *[the date of ordinance adoption]* shall be subject to the non-development clearing rules of this chapter. Conversion does not include changes from one agricultural use to another agricultural use or changes in crops.

2. Agricultural module. Where the owner elects to implement an agricultural/habitat protection plan rather than to comply with the non-development clearing rules of this chapter, the following provisions apply:

a. Standard. An agricultural/habitat protection plan shall be approved if its implementation will provide for agricultural activities that will not substantially degrade riparian habitat functions and values that existed within the areas covered by the plan on *[the date of ordinance adoption]*, considering normal fluctuations due to the agricultural cycle. A plan may be submitted by a group of neighborhood owners whose properties are in close proximity in which case the foregoing standard shall be applied to the common plan. The plan may include practices and other mitigation measures on all lands covered by the plan to achieve this standard.

b. Plan contents. Agricultural/habitat protection plans shall, at a minimum, include the following:

(1) An approximate mapping of existing and proposed structures, roads, driveways, utilities, property lines, and agricultural uses.

(2) A map of the areas covered by the plan.

(3) Identification of riparian habitat functions and values existing within the areas covered by the plan on *[the date of ordinance adoption]*.

(4) A description of best management practices and other mitigation measures to be undertaken in order to achieve the standard in subsection 2a, above.

(5) The owner's signature attesting that the information in the plan is accurate to the best of the owner's knowledge, and the mitigation measures specified in the plan will be implemented.

(6) The signature of an ag-habitat technician certified by the county attesting that they have inspected the area covered by the plan and that the plan satisfies the standard in paragraph (a) above.

c. Guidelines. The responsible official shall work with a committee appointed by the board to include interest group representatives (at least one of whom shall be a designee of the Clark-Cowlitz Farm Bureau, whose view(s) shall be given

1 appropriate weight to ensure that the guidelines will be both practical and cost  
2 effective) and habitat professionals to develop for board adoption following a  
3 duly advertised public hearing a set of guidelines which:

- 4 (1) includes a checklist to identify riparian habitat functions and values;  
5 (2) identifies potential negative habitat affects of various agricultural activities;  
6 and  
7 (3) describes practices and other mitigation measures to mitigate or  
8 minimize those effects;  
9 (4) includes “off-the-shelf” agricultural/habitat protection plans which are  
10 may be applied to typical agricultural properties and activities.  
11 The guidelines shall provide that pesticide use within riparian areas must be  
12 described in the management plan and conform to label instructions.

13 d. Approval. Agricultural/habitat protection plans shall be prepared or reviewed and  
14 approved by an ag-habitat technician certified by the responsible official to have  
15 completed a training program on application of the guidelines. Ag-habitat  
16 technicians shall have received training in application of this chapter, which  
17 training program shall be made available to any interested party. Training classes  
18 may be facilitated by interest groups such as the Clark-Cowlitz Farm Bureau  
19 using trainers from the Clark Conservation District, WSU Extension, or other  
20 groups as may be certified as qualified trainers by the responsible official. An ag-  
21 habitat technician shall approve the plan as meeting the standard and content  
22 requirements of subsection 40.440.040.B.2. An owner dissatisfied with the  
23 review by an ag-habitat technician may seek approval of the proposed  
24 Agricultural/habitat protection plan by the responsible official whose Type I  
25 decision may be appealed under the provisions of Chapter 40.510 (Type I, II,  
26 III,& IV Processes).

27 e. Filing. The ag-habitat technician shall notify the county responsible official of the  
28 adoption of an approved Agricultural/habitat protection plan by a property owner  
29 indicating the property covered by the plan and, at the choice of the property  
30 owner either providing a copy of the plan or summarizing the contents of the plan.  
31 Notice of such approval shall also be recorded with the Clark County Auditor and  
32 run with the land unless the plan is modified or rescinded.

33 f. Modification/rescission. Agricultural/habitat protection plans may be modified by  
34 the owner at any time utilizing the same process as applicable to initial approval.  
35 Agricultural/habitat protection plans may be rescinded by the owner with  
36 approval of the responsible official if the owner certifies either that future  
37 agricultural activities will be undertaken utilizing the non-development clearing  
38 rules of this chapter or agricultural activities have ceased. Notice of  
39 modification/rescission shall be recorded with the Clark County Auditor.

40  
41 3. Administration.

42 a. No application fees apply to the approval of Agricultural/habitat protection plans.

1        b. Evidence of violation of the standard in subsection 40.440.040(B)(2)(a)(1) shall  
2        be grounds for enforcement action under the provisions of Title 32 (Enforcement)  
3        and Section 40.440.030(F).

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